



NATIONAL RURAL
TELECOMMUNICATIONS
COOPERATIVE

2121 COOPERATIVE WAY
HERNDON, VIRGINIA
20171-4542

VOICE 703 787 0874
FAX 703 464 5300
WEB WWW.NRTC.COOP

MARK C. ELLISON
SENIOR VICE PRESIDENT & GENERAL COUNSEL

Via Electronic Delivery

December 10, 2008

The Honorable Kevin Martin
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Ex Parte Presentation
Program Access Rules and Program Carriage Proceedings
MB Docket Nos. 97-198, 07-29, 07-42

Dear Chairman Martin:

The National Rural Telecommunications Cooperative (NRTC) applauds the Commission for its interest and concern pertaining to issues faced by multichannel video programming distributors (MVPD) with respect to the practices of programmers that compel bundling of multiple channels of programming and force carriage at specified levels of penetration or on specified tiers.

NRTC is a non-profit organization that provides advanced telecommunications goods and services to rural America through its more than 1400 members, most of which are rural power and telephone cooperatives and companies. For more than 20 years, one of NRTC's principal businesses has been the licensing and distribution of cable television programming, first in the C-band market and later as an investor in and largest distributor of DIRECTV.

IPTV – Telco Video Distribution

In 2005, NRTC began negotiating and securing, as a buying group on behalf of its members, video licenses from programmers to distribute television programming in Internet protocol format (commonly known as IPTV) over telephone company DSL and fiber broadband lines. Today, NRTC holds licenses for over 300 channels and licenses those channels to rural telcos in markets throughout the United States.

While the NRTC has generally been successful in securing rights, the carriage conditions imposed by many programmers have been daunting. In most cases, the major programmers insisted that NRTC carry every channel the programmers offer on a basic level of service¹ and allow little, if any, flexibility.

¹ As used here, "basic level" means that level above the lifeline service tier, which is generally restricted to off-air, religious, and public service content. As a rule, major programmers require that their channels be delivered to a minimum percentage of the homes served, typically requiring 90% - 95% penetration.

Some major programmers compel basic carriage of anywhere from 5 to as many as 24 video channels in a “carry-one-carry-all” mandate. Although this practice arguably yields a very full and robust offering, the fact that NRTC and its members are compelled to place such a great number of video and audio channels on the basic tier, results in a very costly package both at wholesale and retail that is simply not affordable by many of the rural households our members serve.

Due to such forced carriage, it is virtually impossible for NRTC members to offer a basic package of programming for less than \$45 to \$50 per subscriber. While such expansive (and expensive) packages are common and even acceptable in more affluent markets, the situation is not viable in rural markets where per capita income lags – ever more so in the current economy.²

In most of the markets where NRTC members seek to compete with incumbent cable operators, they find that the cable company is able to offer a 40 or 50 channel package of programming at retail prices that are as much as one-half the price that the NRTC member *must* charge to break even. For example, according to recent trade press reports, Comcast is introducing an “Economy” digital package which includes 50 channels for \$29.99 per month.³ It is impossible for our telco members to enter the market and compete effectively when the telco’s smallest video package (other than lifeline) has over 100 video channels and must be sold at a price that is \$15 to \$20 per month higher than what cable is able to offer.

Confidentiality provisions contained in our agreements prevent NRTC from providing specific details of these carriage obligations, but it is perhaps enough to say at this stage that NRTC members would very much like to be able offer a smaller, lower cost package of programming, but they cannot. In the event that the Commission directs NRTC to disclose specific details, we would be pleased to do so under appropriate confidentiality terms as required by the contracts.

Forced Carriage Even Beyond Video

In one particularly egregious case, a programmer – as a condition of granting NRTC rights to the programmer’s essential mainstream programming – requires our members not only to carry multiple channels on basic, *but has further imposed an obligation on NRTC members to deliver and pay for that programmer’s web-based portals for desktop viewing.* This obligation

² NRTC is able to offer a so-called “limited” or “lifeline” tier, but even in that case many of the mainstream programmers prohibit NRTC and its members from offering any channels on that that lifeline service other than local broadcasts, religious, and home shopping networks. Furthermore, the minimum penetration levels referred to in note 1, above, inhibit the ability of NRTC members to promote the lifeline.

³ “Comcast Unveils New HD Triple Play Tiers”, [Multichannel News](#), December 9, 2008.



extends not only to the member's video subscribers, but to ALL of its broadband customers. Thus, for example, a rural telco that has 10,000 DSL customers in its market might have only 1,000 video customers, yet it must deliver this programmer's web-based content to all 10,000 households served by broadband... and pay a license fee for each of those households. This condition of literally tying the programmer's broadband content to its popular video services places our telco members in a highly disadvantageous competitive position with respect to both video *and* data services. To NRTC's knowledge, this burden has been imposed *only* on telco video providers, thus putting this nascent market at a clear disadvantage to cable and satellite.⁴

The Impact on Independents

Another consequence of forced bundling and basic carriage is the impact on independent channels. Very few independent channels are carried at the basic level and are generally relegated to the optional tiers. NRTC would like to have the flexibility to offer independents on our basic tier or to have a smaller basic tier at a lower cost to allow consumer to have the option of taking more independents. But in order to minimize the already high cost of the basic tier NRTC must make those channels optional, if carried at all.

NRTC has delayed adding more independents because of the carriage requirements of the major programming services. In a few cases where NRTC is carrying an independent on basic, it is because the independent has offered free carriage or a very low rate. This, in turn, impairs the long-term financial viability of the independent channel.

Action is Necessary

The Commission should take action restraining the ability of programmers to use their significant market power held through their most popular channels to force carriage of new, niche, and/or less popular channels – not to mention forced carriage of web-based content.

One might suggest that NRTC simply refuse to accept a contract that ties multiple channels together, but there is really no viable option available if NRTC and its members want to compete. If the package we offer does not contain the most popular 40 or 50 channels, our members will have no chance in the market. But in order to carry those top 40 or 50 channels our members are compelled to carry far more vertically-related channels on the basic level of service.

This situation is not going to improve on its own. It will, in fact, be exacerbated as more independents are forced to either sell out to the major multi-channel producers or close down. The problem will also grow as more networks seek to tie and force delivery of high definition channels and web-based content to broadband customers.

⁴ The practice of a content provider forcing paid carriage on a broadband system also raises some very interesting questions in terms of how such a scheme would fit into a "net neutrality" paradigm.



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The Commission is urged to take appropriate action to restrict the ability of programmers to force "carry-one-carry-all" agreements on the market; stop forced carriage at the basic level; and prohibit the tying of satellite delivered video programming to web-based broadband carriage.

Sincerely,

Mark C. Ellison /gran

Mark C. Ellison
Senior Vice President & General Counsel

Jack Richards
Wesley K. Wright
KELLER AND HECKMAN LLP
1001 G Street, N.W., Suite 500 West
Washington, D.C. 20001

Counsel to National Rural Telecommunications Cooperative

cc: Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell
Marlene H. Dortch, Secretary

